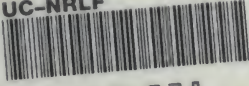


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Its Powers and Constitution

By

ERNEST BARKER

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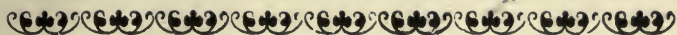
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UNIV. OF  
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**HISTORY I**

TO VIND  
ALPHABETIC

## PREFACE

I HAVE ventured to print, in the hope that it might possibly be of some use to those of my countrymen who are thinking about these things, a somewhat enlarged form of a lecture I had the honour of delivering at King's College, in the University of London, on November 20. I do not claim to be original (I should be afraid if I thought that I were): I only hope that I have stated clearly, in as short a space as I could compass, some of the essential considerations in the grave theme I have sought to discuss.

I owe to Lord Reay (who, if his health had permitted, would have taken the chair at the lecture) the following quotation from the Treaty of Westphalia of 1648, which may serve as a text for all that I have to say, and as a motto for a League of Nations:—

*Teneantur . . . omnes huius Transactionis consortes universas et singulas huius Pacis leges contra quemcunque . . . tueri et protegere, et si quid eorum a quocumque violari contigerit, laesus laedentem imprimis quidem a via facti dehortetur, causa ipsa vel amicabili compositioni vel iuris disceptationi submissa. Verum tamen, si neutro*



*horum modorum . . . terminetur controversia, teneantur omnes et singuli huius Transactionis consortes, iunctis cum parte laesa consiliis viribusque, arma sumere ad repellendam iniuriam . . . salva tamen de cetero uniuscuiusque iurisdictione iustitiaeque iuxta cuiusque Principis aut Status leges et constitutiones competenti administratione. Et nulli omnino Statuum . . . liceat ius suum vi vel armis persequi, sed si quid controversiae, sive iam exortum sit sive posthac inciderit, unusquisque iure experiatur, secus faciens reus sit fractae Pacis.*

E. B.

November 24, 1918.



# A CONFEDERATION OF THE NATIONS

## ITS POWERS AND CONSTITUTION

### INTRODUCTORY

A DUTCH writer, Dr. Ter Meulen, in a learned work entitled *Der Gedanke der internationalen Organisation*, has enumerated, in the period between 1300 and 1800, some twenty-nine plans for an international system, ranging from the pamphlet of Pierre Dubois, 'On the Recovery of the Holy Land' to Immanuel Kant's *Entwurf zum ewigen Frieden*. I say nothing of the plans, or the attempts, of the nineteenth century : I will only remark that Mr. Woolf, in a work on *The Framework of a Lasting Peace*, prints seven schemes for the enforcement of peace which were drafted between 1914 and 1917. Seeing this multiplicity of schemes, and reflecting how many yesterdays have lighted them the way to dusty death, many may easily fall into a too quick despair. But there is another and a better moral which the record may suggest. The undefeated and ever resurgent idealism of the human spirit will not always be balked ; and the very constancy of its struggle bears witness to the permanent existence of an ideal which will yet, in its own day, become real. The events, and the developments, of our own times may well seem to herald the near dawning of that day. On the one hand, the spectacle of war elevated to its highest and most terrible power—engulfing whole 'nations in arms', enlisting the whole armoury of scientific

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resources, dislocating the whole scheme on which the world is fed and clothed and has its material being—all this has produced a shuddering reaction which may give us the psychological basis and foundation necessary for the building of a new international structure. On the other hand, the common war waged by all free peoples against the Central Powers and their allies has created a new comity and sympathy, which once more, in another way, affords a spiritual basis for a League of all Free Nations. Few of us, for example, knew Serbia or Serbians before the war; most of us have Serbians for friends to-day; many of us look forward to permanent bonds of intercourse with Serbia and South-eastern Europe in the future; and there are some who are actively planning schemes of intercommunion, if not of union, between the churches of England and the churches of Belgrade and Athens. Nor is this all. Besides these new psychological factors there are new institutions of an international character, which only need to be extended and correlated in order to become the material beams and pillars of that international structure of which the psychological foundations are being increasingly laid. The nineteenth century saw the development of the Danubian Commission—one of the most valuable of precedents, which may well suggest a solution of the problem of the Dardanelles; of the Universal Postal Union; of an international organ for the suppression of traffic in slaves; and of some thirty or more other bodies of an international character, not the least important of which is the Hague Tribunal of 1899. The beginning of the twentieth century has seen the conclusion of a number of perma-

ment arbitration treaties, by which, in each case, the two contracting parties have agreed to refer differences of a legal nature to a tribunal of arbitration ; and in the autumn of 1914, after the beginning of the world war, Great Britain and the U.S.A. agreed to go still further—to refer all other differences to a process of conciliation, and to place a moratorium on hostilities until the expiration of a period sufficient to allow the resources of that process to be exhaustively explored. Finally, the years of war themselves have witnessed the development of organs of inter-allied action which may well become in time organs of international action. I am not thinking of the Council at Versailles, or of the position of Marshal Foch ; I am thinking of the organs developed by France, Great Britain, Italy, and the U.S.A. for dealing with the problem of food-supply, the rationing of raw materials, and the control of shipping. I may mention, for the sake of illustration, the Allied Maritime Transport Council, which at present controls the active shipping of the world. That Council receives from international committees, on which the four countries are represented, requisitions or budgets for the amount of food, of munitions, and of raw materials needed by each country for a definite period. These requisitions or budgets have been discussed in advance by the representatives of the different countries on the international committees that deal with each class of commodities ; and they are presented, after such discussion, and on the basis of mutual giving and taking between the different countries, as the agreed findings of those committees. They are considered by the Transport Council, and compared with the forecast of the

amount of shipping available for the period for which they are made. If they are too high, they are sent back for modification and reduction ; if they are within the forecast of the amount of available shipping, they are adopted. It is the function of the Transport Council, when the requisitions have been adjusted to the forecast, so to control and direct the movements of shipping that the shortest and most direct routes are used, transshipping is avoided, labour is saved, and every ship is used to its fullest capacity. It is obvious that, in view of the shortage of shipping which will continue for some time after the conclusion of hostilities, this system will be prolonged even into the days of peace ; and it is possible that much of it would be valuable, and may be retained, as a permanent part of a system of permanent peace. But it can only be retained with ease and without friction if it is part of a general international scheme ; and thus along this route, as indeed along all routes, we come upon the need of a general scheme to correlate and extend the many international organs and activities which are already in existence.

#### THE DEFECTS IN THE PRESENT SYSTEM OF INTERNATIONAL RELATIONS

The positive lines of such a scheme may be suggested to our minds, if we consider the defects of such elements of a scheme as at present exist and the ways in which such defects may be supplemented. Four heads of investigation here present themselves to our notice. The first is that of arbitration in disputes between States which involve a point of law or of fact such that



it is naturally cognizable before a judicial tribunal. Under this head we may notice the existence at the Hague not of a permanent court, but of a permanent panel from which a court may be constituted *ad hoc*; and we may notice the existence of a number of arbitration treaties, in each case made between two contracting States, for the reference, either to the Hague Tribunal or to some special body, of legal disputes. But there is a number of defects that may also be noticed. There are many bilateral arbitration treaties; but there is no general consensus of the powers—no multilateral agreement, if we may use that term; and until such a multilateral agreement is made, or, in other words, a League of Nations is established, arbitration is only a partial, and not a universal thing, and dependent not on a generally agreed principle, but upon special conventions. Again, there is a permanent panel at the Hague; but there is no permanent court; and until there is such a permanent court no legal tradition can be established, and each case of arbitration is a totally new problem. Yet again, there are agreements to refer to arbitration legal or justiciable disputes, generally with a proviso that they must not involve vital interests or honour; but there is no agreed definition of the scope of such disputes; and until such an agreed definition exists arbitration may always be eluded on the ground that the dispute in question is not legal or justiciable. Finally, any court of justice must proceed upon a general and agreed body of rules or law; but there is little international law, and that little not well agreed, on which an international court can proceed; and such a court must be hampered so long

as it has to proceed on a body of law which is neither inclusive nor conclusive. This suggests the need of an international law-making organ; but before we turn to that head of investigation there is a preliminary head that needs some inquiry. This is the head of conciliation. Besides legal or justiciable disputes there are disputes on questions of policy—disputes, we may say, not concerned with rights, or to be settled by judges, but concerned with interests, and therefore to be settled by mediators who seek to reconcile and compose, by some compromise or *via media*, the interests which stand in conflict. In the world of labour, where the interests of capital and labour are opposed in much the same way as are, in the field of international relations, the interests of State and State, boards of conciliation are more widespread and more acceptable than organs of arbitration. It is the reverse in the world of international relations. Here conciliation has lagged far behind arbitration. Not until the autumn of 1914 was it possible for even Great Britain and the U.S.A. to agree to refer disputes other than those of a legal nature—in other words, disputes concerned with interests—to the process of conciliation. What is needed is, first, a general agreement or covenant of all free nations, thereby and therefore associated in a league, to refer disputes about interests to a council of conciliation; and, secondly, the institution of a permanent and central council of conciliation, composed not of judges but of men of affairs with tact and experience, who, acting in the spirit with which, in the world of labour, we have learned to associate the name of Sir George Askwith, and developing, by the constant

practice and exercise of their function, an accepted method of mediation, will learn to compose the differences of interests which, whether of their own motion or by the reference of the parties concerned, come under their cognizance.

I turn to the third of our four heads of investigation. This concerns the making, by a legislative organ, of international law. Such law, as we have seen, is neither inclusive nor conclusive, as things now stand ; and it needs to be made inclusive, by the legislative activity of a representative international congress, and again to be made conclusive, in virtue of the agreed legislative authority wielded by such a congress. Existing international law, it is said by Sir Frederick Pollock, 'is ascertained and developed in three ways : by the authority of writers, by recognition and declaration in treaties and other diplomatic acts, and by the embodiment of general opinion in the usage of nations.' Of these three ways the second may lead to the development of clear and cogent law, but hardly, perhaps, the first and the last. And even the second of these ways has its defects. It is true that great treaties (such as those of Vienna and Berlin), and a number of declarations and conventions—all owing their origin to temporary conferences or congresses convened for the occasion—have added greatly to the body of European public law ; but it is also true that they have left gaps and slips which the absence of a permanent organ of international deliberation makes it difficult to fill and amend. The absence of a regular amending authority is especially dangerous ; for it may lead to an ossification of old arrangements which tempts a growing Power to assert its claims by



✓ flat repudiation of treaties. A permanent international congress might not only do a great work of codification, which would give clarity and cogency to those parts of international law which are neither cogent nor clear ; it might also do much to give a very necessary elasticity to those parts of international law which are based on treaties and other diplomatic acts, and thus to prevent a dangerous stereotyping of an obsolete *status quo*. Concrete issues, involving disputes about interests, might be referred to such a congress by the international council of conciliation, with the suggestion that the congress should promulgate a general rule on the issue ; and thus the body of international law might not only be codified, but constantly receive fresh accretions. Such a development, it is obvious, would react favourably on the growth of arbitration, for arbitration, being concerned with rights which must necessarily be settled by law, would grow in amount with the growth of law which made new spheres amenable to a legal settlement. Thus conciliation might foster legislation, and legislation, thus fostered, might in turn foster arbitration ; and thus each organ, by being correlated with others in the general scheme and structure of an international system or league, might aid the work of the rest.

But we have not exhausted the work of an international congress when we have spoken of its activity in codifying old and making new law. Any representative body may have three aspects. It may be legislative ; it may be constituent, and in this aspect it may alter—possibly by special methods and under special safeguards—the constitution of the society or

association for which it acts ; it may be deliberative, and through its deliberations, which may issue in instructions to an executive, it may itself assume something of an executive complexion. When, in connexion with this last aspect, we use the term executive, we come at once upon the fourth and last of the heads of investigation of which we spoke ; and we are confronted by the problem of constituting an international executive to enforce in case of need the awards, or findings, or resolutions of the other organs which we have mentioned. That the absence of such an executive, under our present system or want of system, is a defect, we should be most of us prepared to allow. That the awards of an international court of arbitration should be enforced, and the resolutions of an international congress should, if there is need, be carried into effect, we should also, at any rate in theory, admit—though we might doubt whether conciliation should be compulsory, and we might prefer that the findings of an international council of conciliation should be tendered to the conflicting parties for voluntary acceptance, and only be made obligatory if they have been further considered by the international congress and adopted by that congress in a formal rule or resolution. But when we begin to think of the nature of an international executive, we may begin to diverge. Shall we think of an international ministry, responsible for putting in force, on the instruction of the congress, what we may call an ‘ international execution ’ (something on the model of the ‘ federal execution ’ used against a refractory canton in Switzerland) against a refractory State of

the League, which refuses to accept an award, or even to go to arbitration, on a justiciable issue, or refuses to refer an issue of interests to conciliation? Or shall we simply think of the congress as making one or more of the Powers associated in the League into its mandatory for the enforcement of the principles of the League? A further divergence may also arise on another question. Granted, for a moment, that an international ministry is constituted, should it have under its control an international force or gendarmerie? Or should it only be able to call for contingents or quotas—naval and military—from the governments of different States? And, in the latter event, will the ministry control the disposition and movement of such quotas, or will each quota act on the instructions of the State from which it comes?

#### A SUGGESTED IDEAL

Our four heads of investigation have thus led us to a rough preliminary view of the constitution and powers of an international system. That rough preliminary view has been based, in an empiric fashion, on a consideration of the defects of the existing system and of the improvements which might remedy these defects. But there is another way of inquiry, which is complementary to the one already pursued, and may lead us farther than that has done. Instead of exploring the given facts of our present system, we may take to ourselves wings. We may ask ourselves, 'What are the functions which it would be *best* for the world that an international structure should arise to discharge,

and what are the organs which such a structure should possess in order *best* to discharge those functions?' In this question we have twice used the word 'best', and by using that word we have pledged ourselves to seek an ideal. I hope none of you will be offended if I speak of an ideal, or conclude that I am launching out into the vision of a Utopia. I think it is wrong for a thinker—and that is what I am trying to be—to set forth practical compromises. It is his business to see an ideal—what is the best, and how the best can best be realized: it is his duty to kindle his fellows to love and ensue that ideal. It is the business of statesmen to translate that ideal, with whatever accommodations, compromises, and makeshifts may be entailed by prejudices and interests, into life and effect. I shall be simply following the good example of all the masters of political science whom I honour if I try to tell you what I think to be the ideal powers which a League of Free Nations should exercise, and the ideal organs through which it should exercise those powers.

#### THE POWERS OF A LEAGUE

'Function', the philosophers say, 'determines structure'; and I shall therefore begin by considering the functions a League at its best might discharge. They seem to me, upon reflection, to be three; and I will state the three at once, and then deal with them one by one. The first is to deal with the external relations of State to State, in such a way that, where those relations are relations of conflict that may lead to war, they are settled without war, and where they



are relations of contact that will lead to inconvenience if they are not adjusted on uniform lines, they are adjusted without such inconvenience. The second is to deal with internal matters inside a State which are of such a nature that, if they are left alone to simmer and ferment, they will gravely affect the relations of that State with other States—matters such as the desires of unredeemed nationalities to join a kindred nation, or tariff policies that embitter foreign relations, or increases of armaments calculated to alarm neighbouring States; in a word, a certain class of nationalist, economic, and military matters. The third is to undertake in the general interests of civilization a common guardianship of the backward races and a common stewardship of the undeveloped resources of regions such as Central Africa. The first of these three functions, we may say, is concerned with the sphere of 'inter-State affairs'; the second with the sphere of those 'intra-State affairs' which are also, at the same time, inter-State; and the third with the sphere of what we may call 'conjoint affairs' of the League at large.

(a) *Inter-State Affairs*

In dealing with the first function, and with the first part of that function—in dealing, that is to say, with the external relations of State to State in which conflict leading to war is likely or possible—it will be the business of the League first to provide alternatives to war, and secondly, either wholly or in part, to make resort to such alternatives compulsory. War means the rule of force. The alternative provided must

mean the rule of law. In order to provide this alternative, the League must have power, through a legislative and deliberative organ, to make general rules of international law, in terms of which disputes may be adjudicated upon; and it must have power, through a judicial organ—in other words, a court of arbitration—to decide as judge, according to such rules, all legal disputes which come under the cognizance of such an organ or court. But besides rules of law which apply to rights, there is such a thing as equity, or principles of reasonable fair dealing, applicable to what we have called interests; and the League must have power to reconcile as mediator, through a quasi-judicial organ—in other words, a council of conciliation—all conflicts of interests. With an alternative thus provided, the problem arises of the extent to which the League should have power to enforce recourse to such an alternative. We may lay down the following propositions: first, that the League should make resort to a court of arbitration in all conflicts of rights compulsory upon its members; secondly, that it should make the award of such a court equally compulsory; and thirdly, that it should make resort to a council of conciliation in all conflicts of interests no less compulsory. We should probably be going too far if we laid down the further proposition that the League should make the finding or suggestion of a court of conciliation compulsory; but we may at any rate make two suggestions, that suspension of hostilities should be compulsory during a certain period (a year, or a period of six months) from the reference of a conflict of interests to conciliation, and that, if the congress of the League

should take over from the court of conciliation a conflict of interests which it has failed to compose, and should after deliberation pass a resolution by some specified majority, such resolution should be compulsory. The exercise of compulsion on recalcitrant members in turn involves compulsion on non-recalcitrant members—compulsion, that is to say, to join in putting compulsion on a recalcitrant member ; and it will therefore be a further power of the League, acting through its congress, or, it may be, a committee responsible to that congress, to call upon its members to provide forces and resources for the exercise of such compulsion. It will be seen that all this involves the surrender of independence or 'sovereignty' by the States belonging to the League, and that in two ways. In the first place, they surrender their right to make war *proprio motu*, in so far as they surrender that right wholly in regard to conflicts of rights, and largely in regard to conflicts of interests. In the second place, they accept the duty of making war *motu aliorum*, or on the instruction of the League, against those who refuse to surrender, in the given cases, the right to make war *proprio motu*.

I turn to consider that other range of inter-State matters which is connected with relations of contact. I am thinking of the relations that arise from international communications and all their ramifications—from the postal service and telegraphy ; from through railroads and shipping routes ; from the effects of human movement on the health of the nations ; and from many other similar modes of contact. These relations, as Mr. Woolf has so admirably explained in



the second part of his *International Government*, are handled by a large variety of separate international organs. Some of these organs are public, in the sense that they are composed of persons officially representing departments of State. One of the best instances of this type is the Universal Postal Union, with its central governing authority composed of representatives of the Postal Departments of different States.<sup>1</sup> Some of them, again, are private, in the sense that they are composed of persons representing voluntary associations (such as the International Maritime Committee, which contains representatives of shipping and commercial organizations); and finally, some are half public and half private, in the sense that (like the International Labour Association) they contain both private persons and officials representing departments of States.

It is conceivable that the immediate future may witness a considerable development of what may be called departmental international organs, both public and semi-public. One sphere in which such a development may be expected is that of control of water-ways.

<sup>1</sup> Two features of the Universal Postal Union are worth mention. (1) The number of representatives of the Postal Departments of different States is not the same. This is important in view of the question, which is raised later in the course of this lecture, whether States should be represented equally or proportionately on the congress of a League of Nations. (2) The Union acts on the assumption that, in certain cases, sovereignty is surrendered by the constituent States in the sphere of postal communications; and in these cases the decision of the Union (in some cases by a two-thirds majority; in others by a simple majority) is final and conclusive. This is important in view of the question raised more than once in this lecture, of the extent to which the institution of a League of Nations may affect the sovereignty of States.

Such control was already adumbrated in the Treaty of Vienna of 1815; and it was definitely established by the Treaty of Paris of 1856, which, amplified by further agreements of a later date, has led to the institution of the Danubian Commission. It is possible that the precedent of this Commission may be adopted in dealing with other water-ways, not only along river-courses, but also through straits; and, indeed, it may also be followed in any attempt to solve the difficult problem of giving inland countries an access to seas on which they do not themselves possess any port. Again, as we have already seen reason to think, the problems of international shipping, which have already been handled during the war by an embryonic international organ, may prove in the future to need some form of permanent international regulation. In view of such possible developments, may we not suggest that a League of Nations has a fruitful field of work before it—the work of correlating under its supervision, and of amplifying by its stimulus, the activities of the many departmental international organs concerned with specific purposes? Such organs, now isolated from one another, might be brought into co-operation within the compass of the League: they might report their work, or refer their difficulties, to its congress; and the League, in connecting and aiding their activities, might begin to assume—what, as we proceed, we shall see assumed in larger and larger measure—the positive task of promoting the general interests of civilization.

*(b) Intra-State Affairs*

The second function, and the second set of powers, which we assigned to the League, related to a number of mixed questions—primarily internal, but also and secondarily external; primarily State questions, but also and secondarily, because they react on the life of other States, inter-State or international. Such questions are in their nature fitted to be a matter of deliberation in the congress, or council of conciliation, of the League, because if they are not openly discussed and peaceably settled they may lead to dangerous conflicts of interests which will result in war. This may seem dangerous ground; but I believe that it has to be trodden. There is no dichotomy so subtle that it can draw a clean line of division between what is internal and what is international.

Let us take, first of all, the sphere of nationalist questions. The example of Turkey suggests at once a range of nationalist questions which—it is true with much hesitation—have been more or less consistently treated by Europe as international questions. For centuries it was a common conviction in Europe (and yet, it is true, little more than a conviction) that the 'Eastern Question' was a *materia Christiana*; that it was the duty of Christian States at the least to keep the peace among themselves, and, if possible, to unite with one another in a confederation, in order to present a united front to the non-Christian State of Turkey, and to redeem in common the Christian peoples under its sway. This conviction was again and again the basis of schemes of international organization, from

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Dubois (1300) to Sully (1600) and Alberoni (1700); and it was something of a basis in actual practice for collective intervention by the Powers in the nationalist questions of Turkey. The Turks might urge, as during the nineteenth century they repeatedly urged, that such nationalist questions were their own domestic concern; Europe at large acted on the opposite view. Sometimes a congress, in which we may trace the germ of the congress of a League of Nations, would meet to deliberate on such questions; sometimes a form of mediation, in which we may trace the germ of a council of conciliation, would be attempted; sometimes measures which approached the nature of an international execution would be contemplated. It may almost be said that the idea of a League of Nations was gradually developed during, and in consequence of, attempts to solve the nationalist problems involved in the Eastern Question.

The example of Turkey may be held to be peculiar. But there is another instance which also points the same way. Austria-Hungary, too, has for many years bristled with nationalist questions—first in Italy, and then, when Italy was lost, in other parts of her dominions; Austria-Hungary, too, has taken the view that such questions were her own domestic concern; but in her case, too, such questions have become, as a matter of fact, international. May we not therefore hold, after all, that nationalist problems within a State may be a matter for deliberation in the congress of a League of Nations, or for mediation in its council of conciliation? I do not suggest that *all* nationalist problems are of this type, or that *any* nationalist pro-



blem is *ipso facto* a matter for international consideration. It is possible to draw a line—not, perhaps, a very firm line—of distinction. If a nationalist minority disaffected to the government of the State in which it is included has no kinsfolk in another State with which it would prefer to be connected; if, again (to put the same point in another way), a nationalist problem within a State does not directly affect the foreign relations of that State with other States; if, in a word, a nationalist problem is not an internal affair of the sort that is also, at the same time, international—then, and in that case, we may say that a nationalist question is simply an internal question. It may be difficult to feel assured that any particular nationalist question answers this description. Personally, I believe that the nationalist questions within the British Commonwealth do answer this description; but then, I may be said to be judging in my own case. In any case, I cannot but feel that many nationalist questions really rise to the dignity of inter-State or international questions; that, as such, they are *ipso facto* brought within the domain of inter-State affairs involving a conflict of interests; and that, as such, they are in their nature matters for the consideration of a League of Nations.

But you may feel that some further light ought to be shed upon what I have called a not very firm line of distinction. I would suggest that the line, though it cannot be drawn firmly in any theoretical argument, may be established without very great difficulty in actual practice. A State which regarded itself as affected—and affected adversely—in its relations with another State by a nationalist question within that

State, would seek to raise that question before the congress of the League, on the ground that an inter-State question had arisen which involved a conflict of interests. The congress would have to decide whether it would entertain the question—in other words, whether the question was really international. If it decided in the negative, *cadit quaestio*. If, after hearing the representatives of both States, it decided in the affirmative, the matter might be remitted to the council of conciliation. If that council succeeded in finding a solution, then, once more, *cadit quaestio*. If it failed, the matter might return to the congress, and might be made the subject of a pronouncement of the congress. Whether, and under what conditions, that pronouncement would be binding, is a matter which I ask you to permit me to consider presently, in regard to the whole class of these intra-State affairs. But I would suggest at once that such a procedure as that which I have outlined affords some guarantee against rash and hasty intervention by the States of the League in one another's internal affairs. There is a whole world of difference between such a procedure and the 'intervention' attempted by the Concert of Europe a hundred years ago—intervention which Great Britain justly refused to countenance. Such intervention was actual armed intervention, and it was, in the main, the action of three autocratic Powers in Eastern Europe. The procedure we have just considered does not mean armed intervention, and it would be the action of a League of free national States. And there is another difference. The intervention attempted a hundred years ago was directed against nationality

and imposed on reluctant countries. The procedure we have just considered would be in favour of nationality, and it would involve the voluntary adhesion of all concerned.

I turn from nationalist questions to the domain of economics. Here again questions, which may *prima facie* seem internal, 'trend to point' of international consequence. A depressed proletariat within a particular State, working under bad conditions and for low wages, will tend to affect the standard of life in other States. It is for this reason that some have suggested that the maintenance of a general international standard of life is within the compass of a League of Nations. I earnestly hope that it may prove to be so; for I am profoundly convinced that a League of Nations depends for success on the support of the working classes of the world, and that a League must show that it deserves their support by showing that it is able and willing to consider their interests. But the maintenance of an international standard of life is by no means the only economic function which one may imagine the League attempting to discharge. It is economic questions in general which have contributed largely to war in the past; and it will be the handling of a tolerably wide range of economic questions by some common organ, on lines of conciliation and co-operation, that will contribute largely to peace in the future. There is the question, for instance—a question closely connected with the maintenance of an international standard of life—of regulation of the conditions of Asiatic immigration into regions inhabited by Europeans; there is the question, already mentioned in another connexion, of



international regulation of shipping problems which are international in character ; there is the question of equal access to raw materials, more particularly in the undeveloped regions of the world. Above all there is the question of tariffs. A differential tariff imposed by one State or a group of States against another State or group of States raises an inter-State question : it involves a conflict of interests which may conceivably lead to war ; and it may thus be held to come under the cognizance of a congress of the League of Nations. It is for this reason, I take it, that President Wilson has said that ' there can be no special selfish economic combinations within the League, and no employment of any form of economic boycott and exclusion ', except in so far as the League may use such boycott itself by way of compulsion.

I pass to the consideration of those military matters which, if they too are primarily internal, are also, and almost more, international. This is the matter of armaments, or, negatively stated, of disarmament. If the League is to be an organization of peace, it must obviously be concerned with the tools of war. This question may well seem so vital that some may think that the first and original task of the League consists in securing an agreement for a common limitation of armaments. It is true that nothing is more essential; it is also true that to start with this task would be a wrong order of procedure. To expect States to disarm, or even to limit armaments, in an atmosphere of distrust, is to expect the impossible. Disarmament, if it is to be more than a promise writ on wind and running water, must be, as it were, a fruit that has

ripened to maturity under the influence of mutual trust and common security. In a word, the League must first do the other things of which we have spoken, in order that this thing may be added unto it. But our argument does not preclude the supervision of armaments by the League. The League has not only to quench the burning flax: it has to take cognizance, surely, of any piling up of combustible material. The feeling of security, which is the essential basis of disarmament, will not be perfect unless the States of the League can feel secure that no State is undermining the international structure by secret preparations. The League must ultimately suggest, and bring its members to adopt, some definite measure of armed force; and by inspection and supervision it must satisfy all its members that in no case is that measure overpassed. In this way the argument describes a circle, and returns upon itself. A sense of security is a prior condition of general limitation of armaments; but a general limitation of armaments, attested in every State by competent evidence, is also in its turn the condition of a sense of security.

There is one group of internal questions which is not nationalist, or economic, or military, but may, none the less, be a matter for international consideration. A suspension of law and order in any State may produce results which are international in their scope. *Proximus ardet Ucalegon*. When one of a row of cottages is in flames, the whole row is affected. Racial massacres, religious *pogroms*, proscriptions of classes—these are all matters of more than internal consequence. They are also, it must be confessed, matters of a difficult and

delicate quality. One can conceive a League which, while professing to restore law and order, was really engaged in the restoration of private property and an individualist economy in a State whose citizens were seeking to institute a form of Socialist organization. I am very far from seeking to advocate such a procedure, which would simply be a return to the days of the Holy Alliance. Internal questions which involve the very essence and structure of a State seem to me to be really internal, even if their raising in any one State may tend to involve a corresponding or contagious movement in others. The League must not become a buttress of conservative economics: otherwise it will become the protagonist in a class war which will be all the more terrible because it is international in its scope. At the same time I cannot but feel that a country in which proscription rages, and terrors, red or white, are the order of the day, is a country which presents a definite problem to a League of Nations—a problem which the League cannot simply ignore. In such a country the lives of citizens of all other countries may be imperilled; and it is hard to see that the League would be an aggressor if it undertook their defence. After all, it is one thing to defend the sanctity of human life: it is another thing to defend the sanctity of private property.

It may be said that any 'interference' of the League with the internal affairs of States—whether nationalist, economic, military, or of any other sort—is an infringement and abrogation of their independence and 'sovereignty'. This is a saying with which we must deal frankly and faithfully. We may hasten at once

to say that the congress of the League, which would be the body mainly concerned with the questions under discussion, would by no means necessarily be free to make final and binding pronouncements on those questions by a majority vote unratified by the States which were affected by such pronouncements. On the contrary, there is a sphere (and the questions under discussion largely belong to that sphere) in which the consent and ratification of the States concerned should be a necessary condition of the validity of any pronouncement of the congress. That sphere may be said to embrace two classes of matters—matters affecting the territorial integrity of States, and matters involving a change in their internal laws. It is obvious that many nationalist questions might fall under the first of these heads: it is clear that many economic and military questions, so far as they were settled by internal laws, would fall under the second. And there is a further point. It may well be an article of the fundamental constitution of a League that none of the pronouncements of its congress, even on issues which do not fall under these two heads, should be binding on any dissentient State, unless they are ratified by a special majority of the representatives of the States entitled to vote in its deliberations.

At the same time, there are two considerations in this matter of sovereignty which I shall venture to propound. In the first place, it is necessary to be clear that the mere existence of a League exercising any degree of power—even if we restrict its scope to the sphere of what we have called inter-State relations—is already *pro tanto* a diminishing and impairing of



sovereignty. If States enter a League on the understanding that they are to try certain alternatives to war, either in lieu of war, or before proceeding to war, they surrender part of that sovereignty which has hitherto entitled them to make war *proprio motu*, according to their own judgement and good pleasure. If States, again, enter a League on the understanding that they are to make war on the direction of the League against any State which refuses to embrace these alternatives to war, they are again, and still more obviously, surrendering the sole and spontaneous sovereignty over war and peace which they have hitherto enjoyed. Granted—and the mere existence of a League entails that postulate—that sovereignty is thus to be limited in inter-State relations, we are going very little further if we assume a further surrender of sovereignty in the sphere of those internal affairs which are at once internal and international. But there is a further and more fundamental thing to be said. State sovereignty, in the sense of liberty of the State to do as it likes, is a conception no more tenable than that of an individual autonomy which entitles the individual to do as he likes. We know that the liberty of the individual is a liberty within the four corners of law. What is more, we know that the liberty of the individual is not impoverished, but is enriched, by law. The law of England makes me a free citizen ; without the law I should be a shivering savage ; and the more the law frees me from the liberty of being ignorant of the alphabet, or of working in a sweated employment, the more I gain true liberty. All these things, I firmly believe, are true in their fundamentals of the

State. Its liberty or sovereignty is a liberty or sovereignty within the four corners of that law of the nations which—I am quoting no airy philosopher, but the proceedings of a conference of diplomatists at Paris in 1869—is ‘ a manifestation of the public opinion and in some sort of the conscience of Europe ’. The sovereignty of the State does not stand to be impoverished—it stands to be enriched—by a reign of public law secured by a League of the Nations. A freer self-determination to higher reaches of national welfare will be possible to the nations in the day when their houses are no longer piled armouries of fear, but busy homes of a free and abounding work of national betterment. Do not fear the loss of sovereignty in a League of Nations. You shall be masters of your fate as you have never been in the days when your freedom was the unchartered libertinism of force. Force is never free: it is always limited by other forces. Only the law is free.

(c) *Conjoint Affairs*

I turn to the last of the functions I would have you assign to a League of Nations—the common guardianship of the backward races and the undeveloped resources of tropical Africa, and, it may be, of other regions. Of all the causes of war hardly any is more potent than the struggle of different countries to exploit the labour, or at any rate the resources, of those regions whose oil and rubber and mineral resources are so tempting a bait to our age of motors and mechanical appliances. A League for the ending or mending of war would be fatally handicapped if it could not deal with this most efficacious cause of war. But the argu-

ment for international action in this sphere goes beyond the need of prevention of war. Our consciences are engaged. If there is a conscience of Europe, there is much in the past for which it may well feel compunction ; there is much, very much in the future, for which it must summon up courage and high resolution. There is a duty laid upon all civilized peoples towards their weaker brethren, and through a League of Nations they may rise to the fulfilment of that duty. Some have advocated direct international administration of Central Africa. I doubt if an international body of administration would possess as acute a conscience, or show as keen a sense of responsibility, as a national body of administration whose members shared the moral standard and felt themselves responsible to the public opinion, of their country. The government of separate spheres by separate nations is likely, as far as I can see, to lead to better results than direct international government. Each nation will feel immediate responsibility for the sphere of its control ; and the judgement of the world will be able to affix responsibility for error and wrong upon each controlling nation. But that does not eliminate the need of international action. It only means that such action will take the form of supervision rather than of administration—of criticism rather than of control. National administration : international criticism—that would be my formula. I can imagine an international commission of Central Africa dealing with all complaints of gun-running, drink-running, slave-trade, slave-labour, secret discrimination in traffic charges, and the like ; I can imagine it a guarantor, to natives and Europeans alike,



of a reign of even-handed law and equity. Such a commission, acting under the congress of the League, and subject to an appeal from its findings to that Congress, might do a great work in helping to ensure that, in the regions under its control, all nations had fair access to all necessary resources, and no national administration had a lower standard in its dealings with the natives than the rest.

Here, perhaps, we may see, more definitely than elsewhere, the positive functions of a League of Nations. Let us not think of it only in negative terms of prevention. It is more than that. It can be a balm for healing and settling. When we thought of its first function—that of dealing with inter-State relations—we saw that it might be an agent for the improvement of international communications and the public health of the nations. When we turned to its second function—that of dealing with those internal questions which also affect inter-State relations—we saw that it might help to cure old nationalist sores and to maintain an international standard of life for Labour. And here, where we are concerned with its functions of guardianship of the weaker brethren, we can see still more clearly the positive work it can do. It is, perhaps, not fanciful—if it is, the fancy is one to which I am prone—to compare the idea of the League of Nations, on this score, with the proposals of the Whitley Report. In both the aim is to rise above the old negative method of armed negotiation of opposing camps to a positive work of promoting well-being by a spirit of counsel and joint consultation. The Whitley Report suggests that employers and workpeople should gather together in

joint standing industrial councils, not merely or mainly to settle or prevent disputes, but rather to promote the well-being of the whole of each industry as a form of national service. The proposal of a League of Nations means that nations should gather together in joint organizations of court and council and congress, not merely to avoid war, but also to ensue peace and all her works. The vision behind both that kindles the mind is not the vision of differences scotched : it is the vision of a kindlier and humaner sky, under which differences do not flourish, and co-operation produces rich fruits of betterment. On both plans the way to the vision lies through discussion round a common table—discussion, which is the elixir of mental life and the mother of mutual understanding—discussion, which ends disputes by ending the frame of mind, closed, suspicious, dour, which engenders all disputes. Against both plans the objection may be urged that they are machinery, and only machinery ; and advocates of both plans may answer the objection by the same reply—that to create a machinery for the working of a spirit of joint council is to liberate the spirit itself by giving it a place of exercise. There is a deep wisdom, I cannot but feel, in that reply. It is easy to say that the spirit must come first, and that institutions must grow out of the spirit. It is easy ; but I do not think it is true of human affairs. You must make—for human things do not grow : they are made—you must make the institutions which the spirit can inhabit, if the spirit is to become flesh and dwell among you.

## THE CONSTITUTION OF A LEAGUE

But it is time that I turned to the structure and organs of the League—the structure and organs accommodated to, and necessary for, the discharge of the functions we have enumerated. The first point I should like to take is that there must be a League. This may seem an otiose remark, especially as a League has been implied in all that has been said hitherto ; but I will explain what I mean. Some of us have been inclined to think that the simplest way towards international peace was a system of bilateral agreements, similar to that made between England and the U.S.A. in the autumn of 1914. Such a system would mean that each country entered into separate agreements with each other country to refer disputes to arbitration or conciliation, either before special *ad hoc* bodies arranged in the agreement, or before the Hague Tribunal. The merits of such a system once seemed to me to be that it involved the minimum derogation from sovereignty : that it might prepare a soil on which a League would gradually grow : and that each State in turn might enter into such agreements in its own time, when its own public opinion was ripe, or, again, the opinion of other States was ripe for its admission. The defects of such a system, however, are still more apparent. It is not really an international system at all: It makes no provision for the making of international rules : it makes no provision for the pooling of resources to enforce such rules. It is simply negative : it can have no positive fruits. It is not an institution : it is a sum of separate contracts. What we need is an

international mind ; what an international mind involves is an international institution, or set of institutions, which will stimulate that mind to work and afford channels for its working. Such an international institution can only be erected by a single multilateral agreement ; and a system of many bilateral agreements must therefore be put out of court.

A single and multilateral agreement means a League—a League which, from one point of view, is the agreement itself, and, again, from another point of view, is what is made by the agreement. What is a League ? It is defined in the *Oxford Dictionary* as ‘ a military, political, or commercial covenant or compact made between parties for their mutual protection and assistance against a common enemy, the prosecution or safeguarding of joint interests, and the like ; a body of States or persons associated in such a covenant, a confederacy ’. A League, we may say in Latin, is a *foedus*, and it issues in a *confederatio*. Here we have involved ourselves in the use of the word ‘ federal ’ ; and we may be at first sight dismayed, being unprepared for anything federal, or for any connexion between the word ‘ League ’, which we so readily use, and the word ‘ federal ’, of which we are shy. It may reassure us if we hasten to distinguish between the two kinds of federation—a confederation, or permanent alliance, of sovereign States, which remain sovereign, for the purpose of ending internal disputes and prosecuting joint interests in common ; and a federation proper, or fusion of non-sovereign States, which are only States in a qualified sense and are really provinces, for the purpose of maintaining a common government subject



to a large measure of provincial autonomy. What a League of Nations means is a confederation. Its historical parallel, on a small scale, is the confederation of Swiss cantons formed in the thirteenth century ; and I think it would be a useful thing, in thinking about the League, to study the formation, the organs, and the difficulties of that confederation.

The structure with which we are concerned is, therefore, a confederation—an alliance of sovereign States, intended to be permanent, for the purpose of ending internal disputes and prosecuting joint interests in common. We want to make a confederation of the world, as the Swiss cantons wanted to make—and made—a confederation of Switzerland. I shall therefore substitute the word Confederation for the word League, because I think it leads to plainer thinking, and I shall talk about the Confederations of the Nations. Leagues in history—the Holy League, the League of Augsburg, and the like—have generally been temporary alliances : the proper name for a permanent alliance is Confederation, and we will use that word. We have now to ask who are to be the members of the Confederation. We have used the word ‘ nations ’, and we may continue to use that word, provided that we are clear that we mean nations, and not nationalities—nations organized as States, and not nations not so organized. The Confederation, then, is a confederation of national States—and, we may add, a confederation of *all* national States. Otherwise, it will not be a confederation of the world, or secure the peace of the world : it will be a confederation of certain States, and while it may secure peace among them, it may multiply disputes between them

and the non-confederated States, which may regard themselves as menaced by a confederation in which they are not included. But here we must halt, for we are moving too fast. The ultimate ideal is certainly the inclusion of all ; but as things are two questions arise—the one concerning the quality, and the other concerning the quantity, which may be required as conditions of membership. Under the head of quality I am thinking of two things—the character of the organization, and the degree of civilization, of the State which aspires to membership. It is arguable (and I believe it to be true) that the organization of any State which is to be included in the Confederation of the national States of the world must be democratic. An autocratically organized State will be a foreign body in the Confederation ; for a State so organized will lack the will towards peace which is the fundamental condition of membership. It is for this reason that one body organized to promote a World League has termed itself the League of Free Nations Association. It is perhaps also arguable that it is better to include even an autocratically organized State, on the ground that, included, it may be converted by its association ; excluded, it may be confirmed by its isolation. Here opinions may differ ; and they may also differ, and for the same reason, on the degree of civilization which should be required as a condition of membership. It does not, however, seem unfair to require that a community which joins the Confederation should have attained an ordered citizenship, untroubled by feuds and local vendettas, and should be able to make some positive contribution to the Confederation. After all, we must give to, as well

as take from, any institution of which we are members. With that I turn to the question of quantity, which, as we shall see, raises the question of equality, and brings us into troubled waters. Should we require, as a condition of full membership, a certain size or population ; and should States which fall below that size or population be only admitted on a lower grade of membership ? Or should all States be admitted to the same membership ? If we adopt the second alternative, we are still left with two choices. Shall we give equal voting power to all members, or shall we give voting power to members according to size or weight ? The fundamental question raised by these various alternatives, it will be seen, is whether absolute equality, or proportionate equality, should be the basis of membership. The argument for absolute equality, which will be pressed by the small States, is that the Confederation is a confederation of sovereign States, and that sovereign States, as such, are formally equal. The argument for proportionate equality, which will be pressed by the great States, is that States are practically unequal, and that if a great State is to enter the Confederation, and to assume, as in practice it will be bound to do, a share of the responsibilities and duties in the Confederation proportionate to its size, its position and power must also be proportionate to its size. It may be answered that it is quite possible that all States should have equal voting powers and equal responsibility for the execution of the policies resolved upon in the voting. But that answer may be answered in turn. If that basis were adopted, the contribution made by each State to the Confederation would be determined

by the contribution of the weakest State ; and the total sum of the resources of the Confederation would be a minimum. But we all desire the Confederation to be as strong as possible, in order that it may secure peace as effectively as possible ; and therefore we must invite the strong to contribute in proportion to their strength ; and therefore, again, we must assign them power and position proportionate to their contribution. We must thus accept the principle of proportionate equality, or, if you will, of inequality. I will only add that that principle seems to me to be grounded in theory, as well as in practical necessity. I believe in the equality of man to man, because I believe that each is a personality. I do not believe in the equality of State to State, because I do not believe that the State is a mystical super-personality. A State is an association of men ; and the more men it associates—the greater their wealth, the more numerous their resources of mind and matter—the more voting power does it deserve in any confederation that it enters. Nor do small States really stand to lose on such a plan. If there was only one great State, small States might be outvoted and suffer ; as there are many, and as they will not agree, small States may hold the balance.

Assuming proportionate equality, we may imagine different schemes constructed on that basis. The American League to Enforce Peace, in a scheme put forward this year, proposes a scheme of three groups : the first of large States, or federations of States, with a population of at least 20,000,000, which are to be full members of the League and to assume the responsibility of going to war with, as well as that of putting



economic pressure upon, all recalcitrant members or external enemies ; the second of other States, with the same population, which assume only the lesser responsibility of joining in economic pressure ; and the third of small and neutralized States, living under the protection of the League. Members of the first group would vote on all questions ; members of the second group, assuming no responsibility for going to war, would vote on all questions except those of peace and war ; members of the third group would not vote, but might be admitted to, and might upon occasion participate in, the deliberations of the first two groups. A committee of the Fabian Society, in a suggested Draft Treaty, proposes a different scheme. It suggests the admission of all States to the same membership, but it also suggests a differentiated scale of voting strength on the International Council of deliberation.<sup>1</sup> And it goes further. It proposes a Council of the eight Great Powers within the International Council ; and it assigns to that inner council the functions, first, of considering both questions arising between two or more of the Great Powers and any other questions in which they formally claim to be concerned, and, secondly, of considering and ratifying the proceedings of the three sub-councils, which it also proposed to establish, for Europe, for America, and for States other than the eight Great Powers. The difference between the two schemes is that the one involves different grades of membership, while the other, without creating a formal difference of grades, makes room for actual differences

<sup>1</sup> It will be noticed that the word ' Council ' is here used of what in this lecture has been termed ' Congress '.

of position and power. It is perhaps an objection to the former that it makes a formal hierarchy of States : it is perhaps a still more cogent objection to the latter that, while it makes a practical hierarchy, it also formally stereotypes the existing system of the eight Great Powers. History after all has its movement, and that movement may bring us Powers of which we hardly dream to-day, or it may sweep away the very notion of Powers. We must not begin with a system that prejudices the movement of history ; and that is perhaps an argument for some such scheme as that of the American League to Enforce Peace, which leaves more elasticity in the grading of States within a Confederation of the Nations. At the same time it seems just to remark that the grading of States need not take the form of groups, but may be effected more simply by the allocation of different degrees of voting power to the representatives of different States in the congress of the Confederation. This would mean, in practice, the adoption of the Fabian scheme, shorn, however, of that position of special privilege for the eight Great Powers which the course of history, in the last two years since the scheme was promulgated, has already made largely an anachronism.

I have no time to enter further into the membership and composition of the League. I will only add two remarks : first, that small States may well combine into Leagues or Confederations—a Scandinavian League, for example, or again a Balkan League, or a League of South America—in order to raise themselves, through such combination, into a higher grade and power in the Confederation of the Nations than they would hold

in isolation ; and secondly, and conversely, that a great State such as the British Empire may possibly follow a reverse process, and enter separately in respect of separate units such as the great Commonwealths of Australia and Canada. With that I turn to speak of the various organs of the Confederation of the Nations. Of the first two of these—the organs of arbitration and conciliation—I shall say little. I believe both to be necessary, and, what is more, to be necessary from the first. I cannot agree with the view, which seemed to be suggested by Lord Parker of Waddington in his great speech in the House of Lords on March 19 of this year, and again by Lord Robert Cecil in his address at Birmingham on November 12, that the judicial and conciliatory organs of a Confederation of the Nations are matters of a thorny complexity which might be postponed. The Confederation is surely an attempt to secure the reign of peace through the institution of a reign of law backed by a collective force based on a collective agreement. If it is an attempt to secure the reign of peace, it must possess from the first the peace-making organ of a council of conciliation : if it is an attempt to institute a reign of law, it must possess from the first the law-interpreting organ of a court of arbitration. Assuming the need of conciliation and arbitration, as well as of deliberation and execution, I will only pause to explain what I conceive arbitration to be and to deal with, and how I conceive it to differ from conciliation.

I conceive arbitration to be, not mediation in the light of common sense in every conflict, but judicial decision in the light of law on a conflict of rights. It

is true that we often use the word loosely, in a wider sense ; but it is important to be clear that in this connexion we use the word strictly in the sense defined. That being the case, I conceive arbitration to deal with justiciable issues, only with justiciable issues, but, on the other hand, with all justiciable issues. By saying that it only deals with justiciable issues I mean that it only deals with conflicts on matter of law or matter of fact susceptible of judicial decision by known principles of law or known rules of evidence : by saying that it deals with all justiciable issues I mean that it is not, and cannot be, precluded from dealing with matters of honour and vital interest, if, and provided that, they are matters of a definite conflict of rights susceptible of judicial decision. This, again, is an important point ; for matters of honour and vital interest have often in the past been absolutely excepted in treaties of arbitration, and we ought to be clear that they can only be excepted in the future if and when they are non-justiciable. If it be asked who is to decide when a matter is, or is not, justiciable, we can only answer that according to the general rule of courts the international court of arbitration itself must decide on its own competence and on the cases which belong to its competence.

On this basis we may now proceed to draw a fairly clear line between arbitration and conciliation. In the first place, the former deals with conflicts of rights : the latter deals with conflicts of interests. In the second place, and in consequence, the court of arbitration will be composed of judges, versed in questions of rights under international law ; while the council of



arbitration will be composed of diplomatists—perhaps one should add, reformed diplomatists, of a new type—versed in questions of policy, possessed of experience of affairs, and rich in resources of tact. In a word, one may imagine the council of conciliation as a congress of ambassadors—ambassadors not scattered over Europe, and pulling in differing ways, but gathered together in a constant interchange of ideas ; a congress not necessarily superseding the old embassies, but added to them and connecting them all together. In the third place, and finally, arbitration will be compulsory, in the sense that the court must be approached on all conflicts of rights, and that its decisions must be accepted by the parties in conflict or, failing such acceptance, enforced by the Confederation ; while conciliation, if also compulsory, will be compulsory in a less degree. Resort to conciliation will be compulsory, wherever a conflict of interests cannot be settled by the two parties themselves ; a moratorium on hostilities will be compulsory during a period (it may be of a year : it may be of some months) after such resort ; but after the expiration of that period the parties concerned will be free to take their own measures, unless (as we have already ventured to suggest) the congress of the Confederation has itself taken the matter in hand and itself made an authoritative pronouncement.

It is important to draw this distinction between arbitration and conciliation, because some of the doubts expressed about international organs of justice—as, for instance, Lord Robert Cecil's doubt in the address just mentioned, whether satisfactory and sufficiently

impartial judges can be found—would appear to be connected with an assumption that judges will have to decide on conflicts of interests. On the contrary it is for a council of conciliation, and not for judges, to reconcile—but not to decide—such conflicts of interests. But in one respect, whatever their differences in others, the organs of arbitration and conciliation will agree. Both will be permanent bodies. We must transcend the practice of specially created bodies for each emergency: we must endeavour to institute two permanent bodies, both of which can develop a procedure and a tradition of their own. The Confederation will be a permanent institution: its organs must equally be permanent institutions. Both, again, must be based on that principle of proportionate equality which we have already assumed as the principle of the Confederation; and the number of judges of the court and of members of the council must bear some relation to the weight and the responsibilities of the States from which they come.

These qualities of permanence, and of proportionate numbers of members, will be equally necessary for the third, and central, organ of the Confederation—its congress. That congress will thus be a permanent body, for purposes of legislation, of deliberation, and of that control of administration which is inseparably connected with administration, composed of representatives drawn proportionately from the States of the Confederation. In appointing their representatives, different States may pursue different methods. Just as the franchise differs in the different States of the U.S.A., even when the vote is being used for the

same purpose and at the same election, so may the appointment of representatives to the international congress be made in different ways in the different States of an international Confederation. One State may use the method of direct election: another may leave the choice of representatives to its legislative body, or entrust it to some special electoral college; a third may entrust the choice to its government, subject, it may be, to ratification by the legislature. A more difficult question arises when we consider how far, on the one hand, representatives will, or should, be instructed by their governments, and how far, on the other, representatives may bind their governments by the votes they cast in the international congress. The question is parallel to one which arises in the machinery of representative government inside the State—whether representatives in a legislative body should receive a mandate from their constituents, and whether they should finally decide, without ratification by means of a referendum, the issues by which they are confronted. Whatever we may say of representatives in legislative bodies within the State, it is likely that, for some time at any rate, representatives in an international congress will receive instructions from their several governments. How far they will bind their governments by their votes—how far, in other words, a government will acquiesce in a majority vote of the Congress which runs contrary to its instructions and the vote of its own representatives—that is a matter which, in the last resort, must depend on the subject of the vote. On some matters we can hardly expect a State to be bound unless it concurs in the vote and

ratifies the decision of the congress. A vote, for instance, which requires a State to take active military measures against another State will need its ratification. On other matters we may expect a State to be bound by a vote and to accept a decision with which its representatives and government do not agree. It may be bound, for instance, to lay an embargo on shipping intended for another State. It is obvious, as we have already had occasion to notice, that some delimitation of subjects on which States are bound by the vote of a majority of the congress, and subjects on which they are only bound if they have ratified the vote themselves, will be a necessary part of the constitution of a Confederation of the Nations.

The sphere of the confederate congress will be coextensive with that of the powers we have already assigned to the Confederation. It will deal with inter-State relations ; with those internal questions, nationalist, economic, and military, which, as we have seen, are international as well as national ; and with that common guardianship of backward races and undeveloped regions which we saw to be not the least of the powers of the Confederation. On these matters—subject to the limitations already suggested, especially as regards the second—we may conceive it as acting in two different ways. In the first place it will act by way of legislation. Under this head it will make and recognize international law. It will make international law partly by laying down general rules, partly by making pronouncements on concrete conflicts of interests either remitted to it by the council of conciliation or raised before it in the first instance. It



will recognize international law, so far as it is made by conventions between States, by registering treaties; and here we may add that it should be a necessary article of the constitution of the Confederation that no treaty should be valid which is not thus registered. Not only will it register treaties; it will also, on the request of the parties, consider the need of varying a treaty which has, in part or as a whole, become obsolete; and here the Confederation of the Nations, far from tending to stereotype the *status quo*—a danger sometimes pleaded as an argument against its existence—will serve as a means of recognizing and even promoting the movement of history, and removing that danger to the validity of international law and the cause of peace which comes from the ossification of treaties and the temptation to break what cannot be readily remoulded.

In the second place, the Congress will deliberate on matters of administration. It will be concerned with the enforcement of the awards of the court of arbitration and of its own general rules and particular pronouncements. It will lay down in advance the methods of enforcement, whether by economic boycott, or by military pressure, or by both: it will instruct its executive organs, when the occasion comes, to put into action such methods, or to see to their being put into action by the constituent States of the Confederation. Again, it will correlate the various organs of the international system. It will adjust, in the first place, the relations of the court of arbitration and the council of conciliation to itself and its own activities. It will adjust, in the next place, the position of the

various international organs concerned with particular departments—with the universal postal service, the international care of public health, the international regulation of shipping, and many other similar spheres of international action. Finally, it will adjust the position of local international commissions—for example, the international commission of Central Africa—which deal with those regions or races that need special international supervision in the general interests of humanity.

I turn, in conclusion, to the theme of methods of enforcement and the nature of an international executive. So far we have been discussing the provision of alternatives to war—arbitration in court ; conciliation in council ; deliberation in congress. We have now to discuss the methods of making war unprofitable or impossible—the methods of compelling resort to alternatives, or of punishing failure to resort to alternatives. Three questions arise about the use of force ; when it should be used ; how it should be used ; and by whom it should be used. My answer to the question 'When ?' has already been given. Briefly stated, it is 'On three occasions'. It should be used when arbitration is not sought on a conflict of rights, or its award is rejected ; it should be used when conciliation is not sought on a conflict of interests, or sufficient time is not allowed for conciliation to do its work ; it should be used when an authoritative pronouncement of the congress, passed by the requisite majority on issues of a definite order, is not accepted. My answer to the question 'How ?' would be 'In two ways'. One way is that of economic boycott, partial or absolute. The

boycott has some difficulties, which have to be met ; it has some defects, which may make necessary a recourse to the second way—that of military pressure. The difficulty of the boycott is that it may injure the States that enforce it, as well as the recalcitrant States, and injure the States that enforce it in different degrees. The way to meet the difficulty is obviously by some method of mutual compensation. The defect of an economic boycott is that it may not operate rapidly enough to be effective in time, and, against a country that is more or less self-contained, may hardly be operative even after a lapse of time. We are thus driven to military pressure. This may be applied either by an international force or by national forces acting in conjunction. An international force will hardly be effective ; and we must thus accept the alternative of a conjunction of national forces. But that conjunction of national forces, as the experience of this war has taught us—what do we not owe to Marshal Foch ?—will need a single central direction if it is to be successful. This means that the congress must have an executive committee, to decide upon the quotas to be furnished in case of need and to call upon States to furnish their quotas, and again that there must be, in connexion with that committee, a military and naval general staff of the Confederation to direct all necessary military operations. Here we have already answered the third of our questions—‘ By whom should States be coerced on the occasions on which coercion is necessary ? ’ The answer, we see, is ‘ By quotas of the several States, decided upon an convoked by an executive committee of the congress.

and directed by the general naval and military staff of the Confederation'. And if it be doubted whether States will send their armies and navies on the summons of the Confederation to serve under its officers, one may suggest that, in the day of smaller armies and smaller navies that we anticipate, we may hope for less reluctance than, accustomed as we are to great armies and great navies, we are inclined to expect. The smaller the army, the more readily will it be entrusted to the direction of the Confederation.

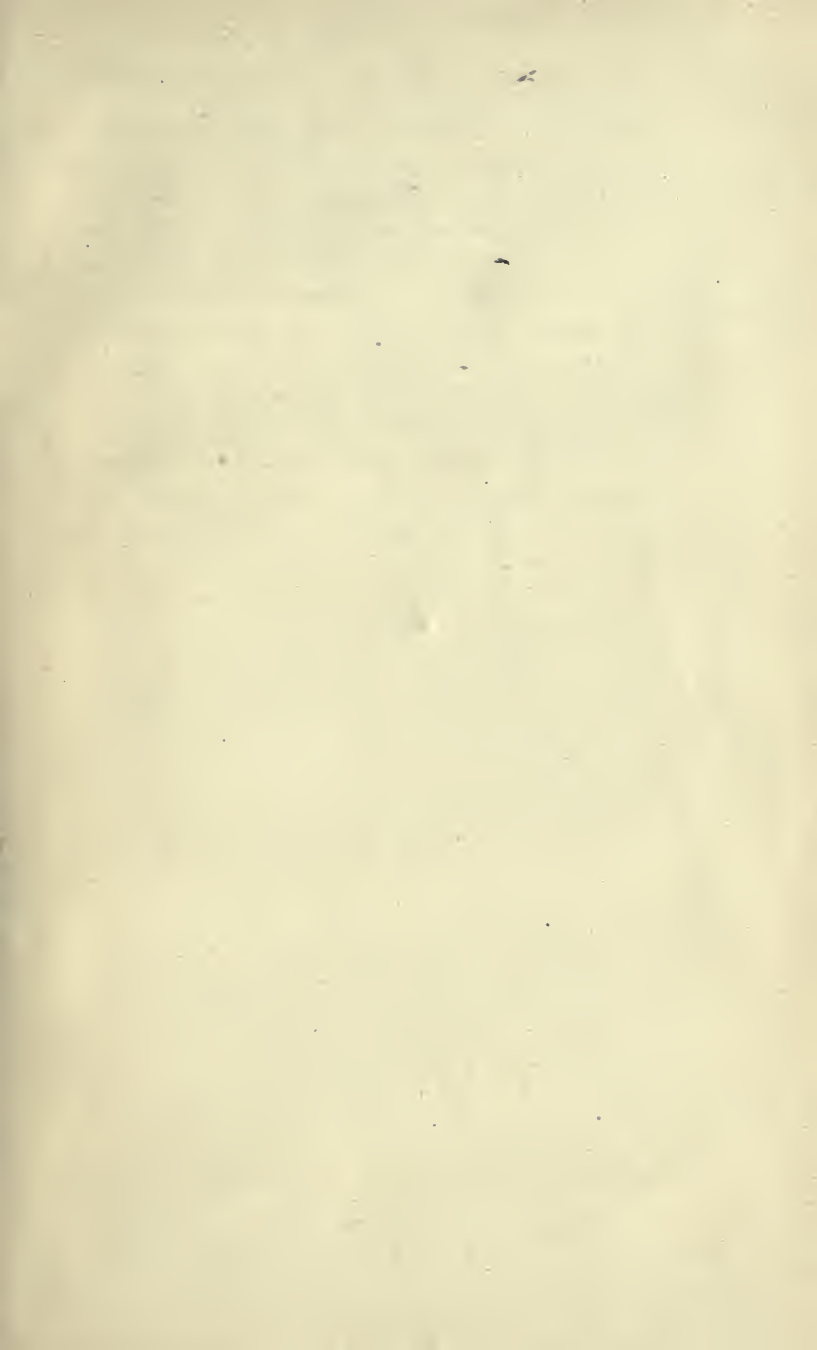
And now the last question rises to our lips—'When shall these things be?' And I answer 'Now'. Now, because we know thoroughly to-day, in our very bones and marrow, the feeling of war: ten years hence a merciful oblivion will have veiled our memories; twenty years hence there will be a new generation which has hardly known war at all. Now, because England and America to-day are closely joined and knit together, and because their two peoples, who have realized the rule of law within their own borders in a peculiar way, are natural yoke-fellows in the institution of a rule of law throughout all borders and among all peoples. Now, for a last reason, perhaps the most cogent of all—because peace is upon us, and because if a League of Nations comes at the peace, as part of the peace, the peace will be a far higher and finer peace than it will be without a League. If we make peace without a League, we make it on the old assumptions; the assumptions of rival powers, of competing diplomacies, of strategic frontiers, of a precarious security defended (or shall we say menaced?) by piled-up armaments. If we make peace with a League, we



make it on new assumptions: the assumptions of co-operating peoples, of a spirit of joint counsel and mutual understanding, of frontiers determined by the desires of each people and the common interests of all, of a guaranteed security that reduces armaments and sets free all their rich proud cost for richer and prouder purposes of human betterment. Just because we can make two kinds of peace, the peace without the League, and the peace that is with the League; just because one kind of peace—the peace that is with the League—is so much higher and finer, shall we not firmly resolve, one and all, that, so far as in us lies, this is the hour, and now is the time, for the founding of our League? Are not the omens propitious? It is but a few days since I began to write this paper; and lo! in these few days the face of the world is changed. I spoke of autocracies, and I asked whether they could be members of the League. Is there an autocracy left to-day? The world is become in a moment, in the twinkling of an eye, at the last trump of war, a world of free peoples—a world dazzled by a new light of liberty; staggering, groping; but still a new world. Is there not hope? Behold, He hath made all things new. Cannot men co-operate with His high making, and build on this foundation of the freedom of the peoples an enduring League and Confederation of a free humanity?

Let us not be afraid of ideals, or hug to our breasts an imagined sobriety of common sense and cautious sobriety. Ideals are becoming flesh, and coming to dwell among us. It is true that the ideal of a Confederation of the Nations must be embodied gradually, line

upon line, stage upon stage. Only let us, from the first beginning and the laying of the first stone, have clearly before our eyes the perfect plan of the ultimate structure ; only let us, in each stone we add, so lay the stone that it will fit into that plan and structure. And let us, too, as we build, cherish one comforting and consoling thought, that we are building a great monument to the memory—and may we not even say for the habitation ?—of the dead who have died that a new and abiding city of peace might be built for a dwelling of the spirit of man. It is a thought that all countries engaged in the war may cherish ; it is a monument that all countries engaged in the war may join in building. In this we can be associated even with our enemies ; through this we can cease to be enemies to them, and they may cease to be enemies to us.



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